

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
JUN 23 2008
CLERK

BRYAN WARD WHITEPIPE,

Petitioner,

-VS-

DOUGLAS WEBER, Warden,
South Dakota State Penitentiary,

Respondent.

CIV 08-3007

ORDER DENYING
CERTIFICATE OF APPEALABILITY

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

Petitioner filed a challenge to the 2003 revocation of probation and five year sentence imposed as to his 2002 state forgery conviction pursuant to 28 U.S.C. § 2254. The petition was denied as untimely, Doc. 7. Petitioner filed a notice of appeal, Doc. 11. The notice of appeal may be treated as an application for a certificate of appealability. Tiedeman v. Benson, 122 F.3d 518 (8th Cir. 1997).

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Petitioner did not and has not made a substantial showing of the denial of a constitutional right.

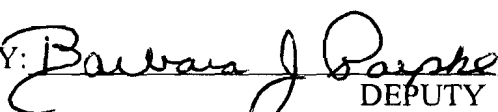
IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's § 2254 petition. This in no way hampers the petitioner's ability to request issuance of the certificate by a circuit judge pursuant to Fed. R. App. P. 22.

Dated this 22nd day of June, 2008.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)